DEDICATION — ACCEPTANCE — ADVERSE POSSESSION — Lots were sold as bounding on an unopened street, appearing on the grantor's map. There was no public acceptance of the street nor user by the public. *Held*, that the public has a right to the street. *Harrington* v. *City of Manchester*, 82 Atl. 716 (N. H.).

The distinction between what constitutes a dedication and what is necessary for the creation of liability for repair on the part of the public authorities is often confused. In the United States it is generally held that there must be an acceptance, express or implied, by the public authorities to charge a city or town with liability. *Maine* v. *Bradbury*, 40 Me. 154; *Downend* v. *Kansas City*, 156 Mo. 60, 56 S. W. 902. And usually acceptance is necessary to complete a dedication. *Chicago* v. *Drexel*, 141 Ill. 89, 30 N. E. 774; *Williams* v. *New York and New Haven R. Co.*, 39 Conn. 509. But a dedication made by the sale of lots with reference to a map laying out streets is irrevocable although no acceptance is made by the public. *Trustees of Methodist Episcopal Church* v. *Council of Hoboken*, 33 N. J. L. 13; *Mayor, etc. of Baltimore* v. *Frick*, 82 Md. 77, 33 Atl. 435. The principal case holds that acceptance is presumed if the gift is beneficial, since a dedication partakes of the nature of a gift. *Flack* v. *Village of Green Island*, 122 N. Y. 107. But this reasoning is not in accord with the authorities, which in most cases require acceptance in fact. *Holdane* v. *Cold Spring*, 21 N. Y. 474. Estoppel is usually given as the basis for the irrevocability, because purchasers of lots have relied on the dedication. *President, etc. of Cincinnati* v. *White*, 6 Pet. (U. S.) 431. But see ANGELL, HIGHWAYS, 3 ed., § 156.

EVIDENCE — DECLARATIONS IN COURSE OF DUTY — ENTRIES MADE BY PERSON OTHER THAN ORIGINAL OBSERVER. — Workmen reported their time expended to a clerk, who entered the time on a slip of paper. These entries were copied by another clerk into a record of the work. The original slips having been destroyed, the record was offered in evidence under the oath of both clerks, the one testifying that he had correctly entered the time on the slips as reported by the men, the other that he had copied the entries correctly into the record. *Held*, that the evidence is admissible. *Pacific Tel. & Tel. Co.* v. *Huetter*, 123 Pac. 607 (Wash.).

For a discussion of the principles involved, see 18 HARV. L. REV. 52; 19 HARV. L. REV. 301.

EVIDENCE — DYING DECLARATIONS — PERSONAL KNOWLEDGE BY DECEASED OF FACTS STATED. — In a trial for homicide A. testified that the deceased made a dying declaration that the defendant shot him. B. testified that the deceased said he knew the defendant shot him because his cousin had told him that the defendant was going to "get" him. *Held*, that B.'s evidence goes to the weight but not to the admissibility of A.'s evidence. *Ex parte Key*, 59 So. 331 (Ala.).

The facts of the principal case will bear two interpretations: either that the deceased had no personal knowledge of his assailant, or that he was confirmed in his own observation of his assailant by his cousin's story. If the first interpretation is correct, the court clearly erred in admitting the declaration. The dying-declaration exception to the hearsay rule can do no more than, in effect, to put the deceased on the stand. *Rex* v. *Sellers* (MS.), O. B. 1796, cited in CARRINGTON, SUPPLEMENT TO CRIMINAL LAW TREATISES, 233; *Whitley* v. *Georgia*, 38 Ga. 50. Even declarations of personal observations by the deceased in the form of opinion are excluded, though this view has been severely criticized. See 2 WIGMORE, EVIDENCE, § 1447. But there is no substantial reason whatever for admitting his fancies, or his opinions as to facts of which he has merely a hearsay knowledge. *Jones* v. *Mississippi*, 79 Miss. 309, 30 So. 759. If, however, on any view of the evidence in the princi-

pal case it was possible for the deceased to have known the fact stated, A.'s evidence would not be vitiated by that offered by B. *Jones* v. *State*, 52 Ark. 345, 12 S. W. 704.

FEDERAL COURTS — JURISDICTION BASED ON NATURE OF SUBJECT-MATTER — LACHES AS A FEDERAL QUESTION. — A state court granted an injunction against the defendants' use of a fraternal name under a federal charter, finding that it was an infringement of the plaintiff's use of the name under a similar charter, and that the plaintiff had not been guilty of laches. A writ of error was prosecuted to the United States Supreme Court on the ground that the evidence showed laches. *Held*, that the judgment be reversed. *Creswill* v. *Grand Lodge Knights of Pythias*, 32 Sup. Ct. 822.

The denial by a state court of the validity of an authority exercised under the United States clearly raises a federal question reviewable in the Supreme Court on writ of error. 1 U. S. COMP. STAT., 1901, § 709. The court in such cases should have the power to examine the evidence as well as the law, and reverse if the finding is clearly unsupported by the evidence. *Kansas City Southern Ry. Co.* v. *Albers Commission Co.*, 223 U. S. 573, 32 Sup. Ct. 316; *Stanley* v. *Schwalby*, 162 U. S. 255, 16 Sup. Ct. 754. *Contra*, *Dower* v. *Richards*, 151 U. S. 658, 14 Sup. Ct. 452. As the court in the principal case had strong convictions as to the insufficiency of the evidence on this point a reversal might be proper, since the state court's denial of laches — unlike the finding of laches — leaves the finding on the primary federal right open to review. *Neilson* v. *Lagow*, 7 How. (U. S.) 772. The court, however, rests its reversal solely on the point of laches. The question of laches, although involving the denial of a federal right, is not a federal question, and the finding of the state court should be final unless the evidence of laches is so intermingled with a federal question that the two cannot be considered separately. *Moran* v. *Horsky*, 178 U. S. 205, 20 Sup. Ct. 856; *Pierce* v. *Somerset Ry.*, 171 U. S. 641, 19 Sup. Ct. 64. The principal case does not seem to fall within the latter qualification.

GIFTS — GIFTS CAUSA MORTIS — WHETHER VALID AS AGAINST HUSBAND'S RIGHTS UNDER DISTRIBUTION STATUTE. — The defendant's wife made a gift *causa mortis* of certain personalty to the plaintiff. At his wife's death the defendant took possession of the property. By statute a husband was given a certain share in his wife's personalty at her death. *Held*, that the plaintiff may recover. *Vosburg* v. *Mallory*, 135 N. W. 577 (Ia.).

Statutes such as that in the principal case generally provide that a husband's right to his distributive share shall be protected, although the testatrix may have made other dispositions by will. *Ward* v. *Wolf*, 56 Ia. 465, 9 N. W. 348; *Brigham* v. *Maynard*, 9 Gray (Mass.) 81. But such statutes do not operate upon property alienated *inter vivos*. *Samson* v. *Samson*, 67 Ia. 253, 25 N. W. 233. It has been held, however, that the husband's rights prevail against gifts *causa mortis*. *Baker* v. *Smith*, 66 N. H. 422, 23 Atl. 82. Such a result depends upon the theory that gifts *causa mortis* are testamentary in nature, the title passing only on the death of the donor. *Hatcher* v. *Buford*, 60 Ark. 169, 29 S. W. 641. The better view, however, seems to be that inherently they are gifts, the title vesting at once in the donee, but defeasible by the donor. *Marshall* v. *Berry*, 13 Allen (Mass.) 43. They are subject to the rights of creditors only when the other assets of the donor are insufficient. *Seybold* v. *Grand Forks National Bank*, 5 N. D. 460, 67 N. W. 682. Revocation, the death of the donee, or the recovery of the donor are to be treated as conditions subsequent. *Basket* v. *Hassell*, 107 U. S. 602, 2 Sup. Ct. 415. Therefore, as there was no property in the testatrix at the time of her death, the statute in the principal case cannot apply. It may be regretted that so ready a means of evading the statute is allowed, but the difficulty appears to be in the narrowness of the statute itself.